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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1943

HERBERT OTTO SCHUCHARDT,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondents.

No. 573

PETITIONER'S REPLY BRIEF

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SYNOPSIS OF ARGUMENT

TABLE OF CASES

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The court below necessarily decided a federal question. It denied relief notwithstanding the claim that petitioner was induced by state officers to plead guilty against his will, was prevented by wrongful acts of state officers from having counsel for his defense and evidence obtained by illegal search was used against him. Therefore, the fundamentals of due process of law were denied him.

It is no answer to say that the Supreme Court of Michigan may have decided the case on the ground that the matter of leave to file what is called a "dilatory" motion is a matter of grace. The decision necessarily comprehended the denial of petitioner's federal rights.

Davis vs. Wechsler, 263 U.S. 22, 24; 68 L. Ed. 143.

Under such circumstances this court decides for itself whether there is adequate non-federal ground to sustain the decision.

> *Patterson vs. Alabama,* 294 U.S. 600, 602; 79 L. Ed. 1082, 55 S. C.R. 575.

And it is sufficient if the federal question was so decided by the highest state court, although not considered by the trial court.

> *Hill vs. Smith,* 260 U.S. 592; 67 L. Ed. 419, 43 S. C.R. 219.
>
> *Lawrence vs. State Tax Commission,* 286 U.S. 276, 282; 76 L. Ed. 1102, 52 S. C.R. 556.

And the denial of the federal right raised by petition for reargument is sufficient.

> *Grannis vs. Ordean,* 234 U.S. 385, 392; 58 L. Ed. 1363, 34 S. C.R. 779.
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> *Chicago R. I. & P. R. Co. vs. Perry,* 259 U.S. 548; 66 L. Ed. 1056, 42 S. C.R. 524.
>
> *Brown vs. Miss.,* 297 U.S. 278, 286; 80 L. Ed. 682, 52 S. C.R. 461.

A federal question was raised in the application for leave to appeal (Tr. 1), not only in the text, but in the assignments of error (Tr. 5). It is also raised in the application for rehearing (which is in the record in this court but was not printed) and it there appears that it was the principal ground relied upon.

> *Saunders vs. Shaw,* 244 U. S. 317, 320; 61 L. Ed. 1163, 37 S. C.R. 638.
>
> *Farmers & Merchants Insurance Co. vs. Dobney,* 189 U.S. 301; 47 L. Ed. 821, 23 S. C.R. 565.

No particular form of words is necessary in raising federal questions below.

Green Bay & Miss. Canal Co. vs. Patten Paper Co., 172 U.S. 58, 67; 43 L. Ed. 364, 19 S. C.R. 97.

The claim of federal right was set forth in petitioner's brief in support of the application for leave to appeal in the statement of questions involved as required by the rules of the Supreme Court of Michigan (Rule 67 Sec. 1). It is submitted that it also appears from the text of the petition for leave to file motion for new trial that the federal questions were necessarily involved and were the principal basis of the application (Tr. 8).

ILLEGAL DETENTION

It is contended that a preliminary examination is not a matter of constitutional right. However, where the involuntary waiver of examination is the result of a plot to induce an involuntary plea of guilty it is an important step in a chain of events.

Ward vs. Texas, 316 U.S. 547, 552; 86 L. Ed. 1663, 62 S.C.R. 1139.

It is stated by respondent that the affidavit of petitioner (Tr. 7), which was sworn to on the day of hearing of the trial court, is now denied by the prosecuting attorney. However, this affidavit was considered by the trial court and was returned to the Supreme Court of Michigan by the trial judge and is part of the record certified to by him (Tr. 6). At the itme when he so certified it as a part of the record, it was not denied. The denial came by the stipulation filed in this court January 24, 1944. The trial court overruled the undenied affidavit.

It is urged that the fact that petitioner did not seek relief for several months after sentence indicates that he

was not surprised and shocked by the sentence. It must be remembered that during all this time he was imprisoned in the penitentiary and hampered from taking prompt action.

HEARING

It is contended that the record does not warrant petitioner's claim that the trial court refused to receive testimony and to have petitioner produced for a hearing upon the motion for new trial. That this was the fact as claimed by petitioner in the Supreme Court of Michigan (See, for instance, Application for Reconsideration of Denial of Leave to Appeal, p. 16, in the record here but not printed) and was never denied by counsel for the People. The fact is, as is common in cases of this type, that much of what occurred could not be gotten into the record. Counsel for petitioner expressly demanded the right to produce testimony and the production of the prisoner at the hearing on June 1, 1943, but the trial judge refused to have the demand and refusal incorporated in the record of the proceedings of that date (Tr. 17).

ILLEGAL SEARCH

It is contended that no articles obtained by illegal search were introduced in evidence. This is true since no evidence was taken. However, the charge that the home of petitioner was rifled (Tr. 14) was not denied by the prosecuting attorney in his answer (Tr. 15, par. 5), but is admitted and affirmed, and the sheriff inferentially admits it but denies his connection therewith (Tr. 17). Nor was there a word of denial by the trial judge in his statement on June 1, 1943 (Tr. 17) that the articles so obtained entered into his consideration in reaching the judgment.

ALLEGED POLITICAL BELIEFS

The same is true as to information contained in statements and reports as to petitioner's alleged political beliefs. Petitioner charged that such matters were used by the court in arriving at a judgment (Tr. 11) and neither the prosecuting attorney nor the trial judge anywhere denied this charge.

Respectfully submitted,

A. W. RICHTER,
Attorney for Petitioner.